IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 759 OF 2007

Domnic Fernandes & Anr. ...Petitioners
V/s.
Baburaj Kanakappan & Ors. ...Respondents

Mr.Swapnil Bangur i/b. M/s. A.V. Jain Associates for the Petitioners.
Ms.Mamta Sadh, AGP for Respondent Nos.2 and 3.

CORAM : V.M. KANADE, J.

DATED : APRIL 24, 2007

P.C. :-

1. Heard the learned Counsel for the petitioners and the learned AGP for respondent nos.2 and 3.

2. The petitioners are challenging the order dated 14th March, 2007 passed by the Deputy Registrar of Co-operative Societies, G-North Ward, whereby he was pleased to appoint an Administrator under the provisions of Section 77A(1-A)(F) of the Co-operative Societies Act, 1960. The grievance of the petitioners is that the said order was passed exparte without giving show cause notice to the petitioners. Petitioner no.1 claims to be the Chairman of the Housing Society and petitioner no.2 is the Secretary of the said society.

3. It is submitted that petitioner nos.1 and 2 are the newly elected members of the Managing Committee in the said society. The terms of the said Managing Committee was to expire on 23rd April, 2007. It is submitted that even before the said term had expired, the impugned order was passed on 14th March, 2007. It is submitted that this order was passed on a complaint made by one of the members. It is submitted that therefore, this order is liable to be set aside.

4. The learned AGP, on the other hand, invited my attention to the affidavit-in-reply filed by respondent no.2. He has stated the circumstances under which the order came to be passed. He has stated that there were two committees which were operating in the said society and the term of the present committee which was elected in the election held in the earlier year, was to expire on 3rd April, 2007 and yet under the provisions of the said Act, no steps had been taken by them to hold fresh elections and therefore, under these circumstances, he had passed an order for appointment of Administrator.

5. In my view, the Deputy Registrar ought to have issued the Show Cause Notice before passing the impugned order. The order obviously has been passed before the expiry of the term of the said Managing Committee. No hearing has been given by respondent no.2 before passing the said order.

6. In the circumstances, the impugned order dated 14th March, 2007 is set aside. The Administrator is directed to handover the records and the charge of the society to the petitioner nos.1 and 2. Petitioner nos.1 and 2 are directed to take steps to hold elections for electing the new Managing Committee for the year 2007-2008. The petitioners to declare the election programme within the period of three weeks from today and thereafter, hold election within a period of fourty-five days.

. With these directions, writ petition is disposed of.

(V.M. Kanade, J.)